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IN THE

Supreme Court of the United States

October Term, 1944.

No. 380.

Canadian River Gas Company, a Corporation, *Petitioner*

v.

Federal Power Commission, City and County of Denver, Colorado, Public Service Commission of Wyoming, Colorado-Wyoming Gas Company, Public Service Company of Colorado, and Colorado Interstate Gas Company, *Respondents*.

REPLY BRIEF OF THE INDEPENDENT NATURAL GAS ASSOCIATION OF AMERICA, AMICUS CURIAE

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SUBJECT INDEX.

TABLE OF CASES CITED.

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Respondents have advanced no new or novel arguments in their brief. However, since a sound resolution of the essential issue here presented seems so imperative from the standpoint of all concerned, and since the hazard of submergence of that primary issue in a welter of confusing detail seems in this instance to be so great, this *amicus curiae*, representing as it does many segments of the natural gas industry, deems it appropriate to make this brief reply.

The fundamental issue to be resolved in this proceeding is quite simple and may be succinctly stated. Disregarding for the moment certain collateral problems assigned by petitioner as error,[1] the essential and critical question—broadly viewed—seems to be *whether the Federal Power Commission has been vested by law with such jurisdiction over the natural gas production and gathering activities of this petitioner as to justify the particular action it took in respect to such activities in the cause now under review.*

Two distinct inquiries are involved in the resolution of this fundamental issue:

(1) In view of the express and unconditional statutory exception of "production and gathering" from the purview of the Natural Gas Act, may the Federal Power Commission (whose authority in such matters must, of course, be discovered within the four walls of that Act) lawfully, in a rate case, comingle a natural gas pipeline company's production and gathering properties and expenses with those of its interstate transportation activities (over which the Commission has unquestioned rate regulatory power) and establish and enforce rates for gas sales at the conclusion of the act of transportation which admittedly include production and gathering factors in both rate base and expense, and which necessarily and confessedly include provision for compensation in respect to production and gathering operations in the allowed "return"?

(2) If the Commission does possess such authority, did it lawfully exercise it in the proceeding under review?

It is important to recall that the Commission assumed and purported to exercise rate-making jurisdiction over "production and gathering" in this case because—as it

[1] Such, for example, as the issue of required "allocation," and the method adopted for that purported purpose by the Commission.

said—such action seemed to it "indispensable." It is equally important to recall that the Commission's counsel argued in the court below that the express statutory exception of production and gathering from the purview of the Natural Gas Act really amounts only to saying that "whenever necessary, for the purposes specifically provided in subsequent sections of the Act, the Commission shall have jurisdiction over production and gathering."

The Circuit Court of Appeals found itself unable to accept this apparently topsy-turvy view of the law. It held that the Act means exactly what it says, and that the Commission possesses no authority, express or implied, dispensable or indispensable, to fix rates for petitioner's production and gathering operations. But, thought the Court, in the instant cause the Commission did not in fact do this, because the rates it actually fixed apply to petitioner's sales of gas at the conclusion of transportation. The Circuit Court so held despite the admitted comingling of petitioner's production and gathering properties, expenses and "return" in the rate-making process here followed by the Commission and despite the significant fact that the Commission certainly thought it had acted, and did act, in such manner as to make rates which, in addition to transportation, unquestionably covered and included petitioner's production and gathering activities, and provided a factor of compensation therefor. Just how the Circuit Court managed to reach the curious conclusion that such rates were not "for production" or "for gathering," though admittedly in full compensation "for" such efforts, it left unexplained. Certainly, if the Commission's rate order should stand, petitioner could not obtain compensation for such activities in any other manner than through these rates.

In the narrow sense, therefore, if the Circuit Court's basic ruling on the law should, under well-recognized juristic principles, be deemed controlling (as "the law of the case"), and if as a result of that ruling the Commission is—without more—to be deemed not to possess power, express or im-

plied, over production and gathering rates *vis-a-vis* this petitioner, the sole issue now to be resolved is seemingly one of fact,—did the action taken by the Commission in fact constitute, in part, a fixing of rates to be charged by this petitioner, out of the proceeds of which it will secure compensation for its production and gathering efforts? There may well be no good reason why this Court should not now treat this case from this narrower viewpoint. When so viewed, we believe there exists no alternative except reversal on this issue of fact—especially since the basic ruling of the Circuit Court on the issue of law seems to be so sound and conclusive.

However, since the Commission and its counsel have taken a much broader view of the pending issues, and since their apparent position is that the exception of "production and gathering" from the purview of this statute is a wholly nugatory provision, this *amicus curiae* has deemed it appropriate to discuss the matter from its less narrow aspects. In brief we have urged:

(1) That, whether or no Congress *could* have legislated to place under federal regulation the operations of natural gas production and gathering, or the rates to be charged therefor (in instances where the gas in question eventually finds its way into the stream of interstate commerce), it is evident that *Congress did not do so*, but instead evidenced its clear intent to the contrary;

(2) That this is apparent from the unequivocal language used by Congress when it declared that the provisions of the Natural Gas Act (without exception) shall not apply to production and gathering;

(3) That the Natural Gas Act thus discloses on its face that the entire subject of production and gathering of natural gas (including, of course, the establishment of rates applicable to production and gathering operations) has been effectively excluded by Congress from the Commission's jurisdiction;

(4) That the legislative history of this statute affords ample support for this proposition, and in fact discloses that the Natural Gas Act is not reasonably susceptible of any other interpretation;

(5) *That the Circuit Court of Appeals was therefore correct in its ruling on the law in this proceeding;*

(6) That the action of the Commission in this case was in truth and fact—and, indeed, in every real respect—an act of fixing rates "for" production and gathering activities, as well as "for" gas transportation operations, and is admitted to be such by the Commission;

(7) *That the Circuit Court of Appeals was therefore wrong in its finding of fact to the effect that the Commission's action did not constitute a fixing of rates "for" production and gathering;*

(8) That the mere fact that produced and gathered gas eventually finds its way into interstate commerce cannot, of itself, form the basis of an assertion of powers which Congress, in its discretion, has specifically excluded by express statutory language;

(9) That, in particular, an assertion of such power by a regulatory body, merely because of some subjectively-assumed "necessity" or "indispensability," may not be judicially sanctioned or condoned, since to do so would be tantamount to affording to such administrative agency a free license to operate by mere whim, whenever it might declare it to be "necessary" in its sole opinion so to do,—though such action be in the very teeth of the statute which defines its powers;

(10) That if no such power here exists, its asserted exercise *vis-a-vis* this petitioner was patently unauthorized and unlawful, and must therefore be reversed, and

(11) That, in any event, even were the power to be conceded, its exercise in the cause at bar was improper

and unlawful because of the special character of the operations and of the commodity here involved.

All of which is, of course, merely to say that if—as we firmly believe—the Commission did not possess the asserted power, its action was obviously unauthorized and should be declared null and void; but further that, even if it were to be admitted that the Commission does possess the basic authority, its attempted exercise of the power in this cause was in complete disregard of "the nature of the critter" before it, and its action should therefore be reversed on that ground.

ARGUMENT.

In our opening brief we outlined the reasons which impel us to agree with the Circuit Court of Appeals' ruling that the Federal Power Commission has not been vested with power, express or implied, to fix rates for, or including, petitioner's production and gathering operations. In that connection, we examined the Natural Gas Act and its legislative history, and expressed the view that Congress not only clearly intended to except the mere physical acts of natural gas production and gathering from the purview of the Act and from the authority by that statute vested in the Commission, but that it also appears from the plain language of the Act that Congress equally clearly intended to except from the scope of the Commission's authority such rate-making functions as were attempted to be exercised in this proceeding in respect to petitioner's production and gathering activities. We also examined the action of the Commission in this proceeding, and concluded that such action was, in fact and in truth, an attempted exercise of power to fix this company's rates "for production and gathering."

We therefore urged that the Circuit Court of Appeals was right in its ruling that the Commission may not, directly or indirectly, establish petitioner's rates for production and gathering activities and services, but that the Court was obviously wrong in holding that the Commission

did not in fact essay to do that very thing in this instance. Finally, we argued that, regardless of power or jurisdiction, the nature of natural gas and of its production and gathering is such as to render unreasonable, unlawful and violative of petitioner's constitutional rights the position adopted by the Commission in this instance. We shall not repeat our opening arguments.

However, it occurs to us that it may serve a useful purpose to afford the Court with certain concrete illustrations of the results to be expected if the Commission's jurisdiction were to be sustained, and if its action *vis-a-vis* this petitioner's production and gathering activites were to be approved by this tribunal. Before doing so, we desire respectfully to reiterate our complete acceptance of the views set forth by Mr. Justice Jackson in the *Hope case*[1] (quoted at length in our opening brief) with respect to the dangers, the confusion and the topsy-turvy results to be apprehended from an acceptance of the procedure and methods adopted by the Commission in this proceeding—including the "end results" thereof. It was the view of the learned Justice that the use of "cost" of leaseholds, wells and associated facilities as a rate base cannot be justified where the production and gathering of natural gas is concerned, and we believe his discussion clearly discloses that *this is no mere Smyth v. Ames*[2] *issue*, but is a beast of totally different aspect.

To simplify our examples, let us assume a natural gas field whose producing area is covered by numerous gas leases, lettered A to Z, inclusive, on each of which a gas well has been drilled, and from which wells large sales of gas for divers purposes are being made, many in purely intrastate commerce. Of these leases:

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[1] *Federal Power Commission v. Hope Natural Gas Company*, 320 U. S. 591. Oddly enough, respondents failed in their brief herein even to mention Mr. Justice Jackson's cogent discussion.

[2] 169 U. S. 466.

Lease A is owned by Silas Brown, whose well cost $50,000 and is capable of producing on a safe commercial basis 10,000,000 cubic feet of gas per day;

Lease B is owned by the Intrastate Drilling Company, whose well also cost $50,000 but produces only 1,000,000 cubic feet daily, and

Lease C is owned by the Interstate Commerce Gas Pipeline Company, whose well cost $50,000 and produces 5,000,000 cubic feet daily.

For simplicity let us omit "gathering" in our discussion, and assume that the Interstate Commerce company produces the gas from its own well; that it purchases the gas from Brown's and Intrastate's wells at the well-head (paying therefor the going field rate), and that it then transports the comingled gas through its trunk pipeline into another state, where it sells all of it to a distributing company which resells it to domestic, commercial and industrial consumers. Obviously, the Interstate Commerce company is by definition a "natural-gas company" under the Natural Gas Act, and the rates charged by it to the distributing company for gas sold and delivered to the latter "for resale" at the end of the interstate gas transportation operations are therefore subject to regulation by the Federal Power Commission.

Over the years a definite and well-recognized field price of gas at the well-head has come into being in this gas field, and large sales are being made at approximately such price from many wells by many leaseholders for many purposes. The basic "reasonableness" of this commercially recognized price per cubic foot of produced gas has thus been tested by the relentless operation of the law of supply and demand, and this price has necessarily been accepted by many buyers and sellers in numerous arm's-length transactions, regardless of their individual lease or well costs or relative productivity.

Under the method of production and gathering rate-making adopted by the Commission in the instant cause, the Commission would allow to the Interstate company, as expense of purchased gas, the amounts paid by it to Brown and the Intrastate company (at the going field rate) for the gas purchased from them, but would allow as expense only the cost to the Interstate company of the gas produced by it from its own well. Thus the allowance for gas entering Interstate's pipeline would be one amount for the gas from Brown's and Intrastate's wells, and another for that from Interstate's neighboring well.[1] And oddly enough the Commission would apparently apply its "cost of production" method to any gas purchased by Interstate from another "natural gas company" (say from "Lease D" in the assumed field), even though it were purchased at that concern's well-head, and even where that company's gas transportation activities (under the Commission's unquestioned jurisdiction) were wholly separate from that well and did not draw therefrom, or even

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[1] This was exactly what was done on a large scale by the Commission in respect to the Panhandle Eastern Pipe Line Company (whose appeal of the Commission's order—No. 296, this term—is on argument in this Court concurrently with the instant cause). Of course, if such a natural gas company's costs per cubic foot of self-produced gas were greater (rather than less than) the fair, going field price at which it was purchasing some of its gas from others, the Commission would find it difficult, if not impossible—even if it so desired—to be consistent and to allow such higher cost for the company's self-produced gas in establishing the production factors in its rates. Many good reasons would doubtless at once occur to the Commission why it should not (and could not) do this, for to do so would be to afford a bonus to inefficiency or lack of foresight. Thus what is sauce for the goose would not for long remain sauce for the gander, and there would be left outstanding only the penalty for efficiency and foresight. The Commission's method simply cannot be anything but such a one-way road.

if they were from a totally different gas field.[1] (We shall later see why even Brown's and Intrastate's sales are in the penumbra of this process of accretion of power by the Commission.)

Moreover, if leases A, B and C were owned by three separate "natural-gas companies" under the Commission's jurisdiction, and if their respective interstate pipeline transportation expenses were precisely similar, the rates which could be charged for their gas at the end of the transportation—under the cost-of-leaseholds-and-production-facilities method adopted by the Commission in the instant cause—would obviously vary tremendously. In fact, under our cost and productivity assumptions, the production factors of such rates would necessarily vary not by five per cent or ten per cent, but by a thousand per cent for the same amount of gas, so transported for the same cost. If the cost of drilling some of the less productive wells had in fact been greater than the cost of drilling those of greater productivity—a not uncommon situation in this industry—the disparity would be even more striking. And if, as would doubtless be the case, the cost of acquiring leaseholds had varied with the time of entrance of these several companies into the field, a further disparity would result from the Commission's singular approach to this problem.

As Mr. Justice Jackson so clearly pointed out just a year ago in his separate opinion in the *Hope case*, any such extraordinary results would be as unwarranted, incongruous and unrealistic as they would be inevitable under the Commission's adopted method. Doubtless others of the Justices then deemed it unnecessary to decide this point, since the Hope company did not in that case raise it as an issue. *However, now that the point is raised and now that*

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[1] This extension of the Commission's doctrine in the instant cause is exemplified in its ruling, now on appeal, in *Louisiana Public Service Commission v. Interstate Natural Gas Company*, Docket No. G-149, Opinion No. 91, 48 P. U. R. (N.S.) 267.

the issue is contested, it must not only be considered, but is in fact the very "meat" of the case at bar. And when this problem is viewed realistically, it becomes apparent that, however suited a method may be to the making of rates for ordinary utility services, or even for the service of transporting and selling natural gas in pipelines, no method which necessarily produces the strangely varying results just outlined can be deemed to possess either logic or validity in the establishment of appropriate charges in relation to the production of natural gas.

In the *Hope case*, Mr. Justice Jackson succinctly observed that in developing a "rate base" to apply to ordinary public utility operations the aim is "to reason from the known to the unknown." But, as he also observed, when natural gas fields are involved, this method at once becomes "topsy turvy," for:

> "Gas itself is tangible, possessible, and does have a market and a price in the field. The value of the rate base is more elusive than that of gas. It consists of intangibles—leaseholds and freeholds—operated and unoperated—of little use in themselves except as rights to reach and capture gas. Their value lies almost wholly in predictions of discovery, and of price of gas when captured, and bears little relation to cost of tools and supplies and labor to develop it. Gas is what Hope sells and it can be directly priced more reasonably and easily and accurately than the components of a rate base can be valued. Hence the reason for resort to a roundabout way of rate base price fixing does not exist in the case of gas in the field."

Therefore, he concluded,

> "To regulate such an enterprise by indiscriminately transplanting any body of rate doctrine conceived and adapted to the ordinary utility business can serve the 'public interest' as the Natural Gas Act requires, if at all, only by accident."

Although the frank allowance in all instances of the going field price for produced and gathered gas would thus seem

to be the procedure most fitted to do justice to all interests—as well as to reflect most fairly and realistically the economic problem confronting the regulatory body in such a case—it has been reiterated many times in the briefs on file in this cause that if for any reason such fair field price, or value of the gas, as a commodity, in the field under consideration should not be as readily available as it is here, or if—in the case of a transporter who is also a producer—the Commission should for any reason prefer so to do, it could, of course, reach a result quite similar to that of allowing the fair going field price as an expense by including the company's producing and gathering properties in what would be tantamount to a "rate base" at their present market value. We do not deem this a particularly "artistic" mechanism, but it is certainly preferable to the method adopted in this cause. And since the fair field value of the gas is ordinarily so readily discoverable, it seems clear that only in the very unusual instance would such regulatory circumlocution be either justified or appropriate.

The issues and illustrations which have been outlined are in no sense merely academic. For example, from the vast Panhandle Gas Field of Texas numerous great pipeline systems now transport gas to many distant markets. Yet, under the Commission's production "cost" allowance method, as here exemplified, widely differing rates will inevitably be fixed for gas transported through these several systems, since obviously no two will be found with the same lease and production costs. This situation actually exists today, and regardless of an abundance of testimony as to the effective, fair, going rates for gas, as a commodity, in that field, the Federal Power Commission has already used its curious method of production and gathering rate-making in respect to several such lines.[1] Soon it will have moved to establish rates for all the interstate pipelines from

[1] The case of *Panhandle Eastern Pipe Line Company, et al. v. Federal Power Commission, et al.*, No. 296, this term, concurrently on argument with the instant cause, is an excellent example of this procedure.

that field, as well as from the other great gas fields of the nation, and a sound and early resolution of this fundamental issue is therefore imperative.

Such a clearing of the atmosphere seems even more essential because of the tendency, already exemplified, toward an expansion of this "cost of facilities" ratemaking method into other types of factual situations. Exemplifying this trend is the recent proceeding, already noted, and now on appeal in the Circuit Court of Appeals for the Fifth Circuit, in which the Commission went beyond its attempt to fix at "cost" the allowance for gas produced by a pipeline itself (as in the instant cause), and assumed jurisdiction to fix at "cost" the rate to be charged by a "natural-gas company" for gas produced and gathered by it in a large gas field but sold by it in that very field (as a result of arm's-length bargaining) to another, wholly distinct "natural-gas company." (*Louisiana Public Service Commission* v. *Interstate Natural Gas Company, supra.*) This action was taken on the asserted ground that these production and gathering sales were "sales in interstate commerce." And logically, if this trend should continue, the next step must inevitably be for the Commission to assert the power to fix the rates of individual producers, at their divers individual "costs," an almost inconceivably complicated, expensive, time-consuming, and—as we believe—uncalled for task. Yet, under the Commission's premise, these sales might also be deemed to be "sales in interstate commerce."

We have already pointed out that the adoption of the Commission's production-facilities-cost method is wholly unnecessary in any of these situations, from either the commercial, the economic or the public interest viewpoints. Small wonder, however, that the Committee on Natural Gas, Section of Mineral Law, of the American Bar Association remarked, in its 1943 report, that "The mere contemplation of the Federal Power Commission regulation of the well-mouth price of gas which finds its way into interstate commerce makes thousands of individual producers shudder."

And it is to be noted that it was not regulation—as such—which was thus being discussed, but regulation of the type under consideration in the instant cause, for the Committee added:

> "The principles of cost adopted by the Commission in its rate-fixing activities would eliminate forever discovery value, would limit the financial recovery to cost plus $6\frac{1}{2}$ per cent and take away all incentives to wildcat operations. Losses incurred in unsuccessful projects could not be balanced out against the cost of other and different successful projects. Two wells each costing the same but one producing twice as much as the other would result in the price of gas from one well being twice that of the other. It is not too much to say that the economic incentive for the small producer engaged in widely separated projects would be gone."

Acceptance of the "fair field price" of gas (by whomsoever produced), as the reasonable and logical gas production expense allowance in all instances, will cure every difficulty which has been indicated. Such natural gas is a commodity and is bought and sold on the market, and such fair field price is ordinarily readily ascertainable—witness the unquestioned evidence on this subject in the instant cause. Because of the nature of natural gas and of its production, the principle applies with equal appropriateness both to purchased gas and to gas produced by the transporter itself. Certainly it seems incongruous for one amount to be used in rate-making for purchased gas, and another amount to be used in the same case for self-produced gas from neighboring wells in the same field.

It is as if a motor bus company also owned an oil well from whose production it refines gasoline which it uses (along with gasoline purchased from others) to operate its vehicles. No regulatory body of which we have any cognizance would go through the circumlocution of developing the gasoline expense allowance to be used in fixing such a company's rates by taking the purchase price of the gaso-

line obtained from others and then computing and adding to that sum the "cost"[1] of the company's self-produced gasoline. Rather it would of course use for such allowance

[1] Such "cost" per gallon (under the method which the Commission purported to use in this proceeding) being derived by adding the following:

(a) The operating expenses of running the gasoline refining plant and associated facilities;
(b) The expense incurred in pumping from the oil well that portion of the total pumped oil which is used for gasoline refining purposes;
(c) The taxes on the gasoline plant;
(d) A reasonably allocated portion of the taxes applicable to the oil lease, well and pumping facilities;
(e) The appropriate depreciation accruals on the various component parts of the gasoline plant;
(f) A reasonably allocated portion of the appropriate depreciation accruals applicable to the oil well and pumping facilities;
(g) A reasonably allocated portion of the depletion accruals applicable to the oil lease;
(h) The allowable "return" (i.e., 6½%, or some other selected percentage, of the sum of the following:
  (1) The investment in the gasoline refinery and associated facilities;
  (2) A reasonably allocated portion of the investment in the oil lease (unless lease payments are included as operating expenses);
  (3) A reasonably allocated portion of the investment in the oil well (i.e., its drilling cost), and
  (4) A reasonably allocated portion of the investment in any other jointly used facilities

and by dividing the total by the number of gallons of gasoline produced and used. Of course, it would not be simple to determine the proper allocations to be made in the above calculations, and there might be (and doubtless would be) other items of difficulty and other complications. But we believe the above outline affords a reasonable, even if somewhat rough, picture of the process.

Unless—perchance—part of the gasoline in question were being used in other operations (over which the Commission had no jurisdiction), or were being sold in the open market at its general market price,—in which event other allocations would be requisite and other difficulties would at once arise.

And if there were three or four bus lines, each with its own oil well and gasoline refinery, and each with its separate "costs,"—wouldn't that be a pretty kettle o' fish?

the value (at the current market price) of all of the gasoline in question. To do otherwise would only result in penalizing the bus company (for any efficiency it might show in gasoline production) or its patrons (for the company's inefficiency)—neither result being appropriate to the situation.

It is equally incongruous for numerous different (similarly derived) rates to be made applicable to similar amounts of gas produced from the same underground reservoir at the same time by different companies, ~~as it is for~~ one amount to be used in rate-making for purchased gas and another amount to be used in the same case for self-produced gas. Yet the Commission's adopted method necessarily results in these incongruities.

In their brief, respondents assert the difficulty of ascertaining the fair field price of gas, but the accumulation of testimony on this subject in numerous cases before the Commission belies this apprehension. Certainly the Commission is in no instance left helpless. Ordinarily, the price for gas set forth in purchase contracts in the field may fairly be used (as the Commission actually has done up to the present time in most instances of independently produced gas). If the Commission should entertain any doubt, it could call for proof, and in the case of gas purchased from an "affiliate" it might be justified in holding the burden to be on the purchasing company to prove the contract price a fair, going field price. Where the gas is self-produced the burden of proving such fair, going field price (or value) would doubtless be on the producer. Only where adequate testimony cannot be had would the Commission be forced to any sort of computation, let alone the particular one it selected in the instant cause. We venture to say that in few, if any, cases (where large pipelines are involved) would any difficulty of consequence arise in the development of a proper allowance equivalent to a fair, going field price, or value, of the gas.

Therefore, because of the nature of this commodity and of its production, as well as the dangers, the difficulties and the confusion to be apprehended from any other course of action, we urge that the regulatory forces and the courts should firmly eschew any temptation to assimilate this particular item into usual utility service regulatory categories, and that they should recognize that this is not an ordinary "rate base" problem, but rather involves "an entirely different sort of critter."

CONCLUSION.

If the Federal Power Commission's gas production "cost" method of rate-making should now be judicially approved, the road ahead for the nation's gas pipeline companies cannot be other than a one-way street. For, if such a concern's gas production costs (for leases and drilling) are low for any reason, and if it can therefore produce gas for a total cost per cubic foot less than the recognized and going field price for such gas in the field, it will patently be penalized for its foresight or efficiency; whereas, if its costs per cubic foot of produced gas are for any reason greater than such fair, going field price, neither this Commission nor any other conscientious regulatory body would (or could for long) allow it such higher costs as reasonable expenses in fixing rates for the sale of gas at the conclusion of its transportation operations, if it could purchase the same amount of gas at lesser cost in the field. Obviously, though the fair market value of such a commodity so transported and sold may from all viewpoints be deemed fairly to measure the propriety of the expense allowance, the Commission's adopted method, as here exemplified, must inevitably mean "Heads we win; tails you lose." It could not be otherwise.

We respectfully submit that the Federal Power Commission does not possess jurisdiction to fix petitioner's rates for production and gathering, and that its action in the instant cause was therefore unauthorized, since it clearly

constituted an attempt to fix such rates. On the other hand, if the Federal Power Commission should be deemed for any reason vested with jurisdiction to establish these production and gathering charges, we submit that the machinery which it here adopted was wholly unsuited to the problem before it. Under either aspect of the situation, the Commission's action—and that of the Circuit Court in approving it—should be reversed.

Respectfully submitted,

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